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Specially Appearing for Defendant  
South Coast Winery, Inc.

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Of Counsel for Defendant  
South Coast Winery, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Mark Carter, an individual, and Christy Carter,  
an individual,

Plaintiffs,

vs.

South Coast Winery, Inc.

Defendant.

**CASE NO. C08-02979 (EMC) ADR**

**DEFENDANT'S MOTION TO DISMISS,  
STAY OR TRANSFER UNDER THE  
FIRST-TO-FILE RULE AND F.R.C.P.  
12(b)(3) & MEMO OF POINTS &  
AUTHORITIES IN SUPPORT**

**Date: August 27, 2008  
Time: 10:30 a.m.  
Courtroom: C, 15<sup>th</sup> Floor  
Judge: Hon. Edward M. Chen**

**PLEASE TAKE NOTICE THAT** at 10:30 a.m. on Wednesday, August 27, 2008, or as soon thereafter as counsel may be heard, in Courtroom C, the courtroom of the Honorable Edward M. Chen located at 450 Golden Gate Avenue, San Francisco, CA will move for an order either dismissing, staying or transferring the instant action under the "First To File" rule and Fed. R. Civ. Proc. 12(b)(3).

1 This motion will be made on the grounds that defendant South Coast Winery, Inc. filed an  
2 action in the Central District of California entitled South Coast Winery, Inc. v. Mark Carter &  
3 Christy Carter, Case No. CV-08-03269 CAS (RCx) on or about May 11, 2008. That action is  
4 pending before the Honorable Christina A. Snyder, Courtroom #5 located at 312 N. Spring Street,  
5 Los Angeles, CA 90012.

6 In response to South Coast Winery's ("SCW's") complaint, on or about June 20, 2008, the  
7 plaintiffs in this action filed an answer and counterclaim. The counterclaim asserted four  
8 virtually identical claims to the claims raised by Carter Cellars (Mark and Christy Carter) in this  
9 action. SCW's action was filed first and there is an identity of both parties, issues and causes of  
10 action in both matters such that the "first to file rule" should be invoked without exception.  
11

12 The instant application will be based on this Notice of Motion and Motion, the attached  
13 Memorandum of Points and Authorities, and the declaration of David L. Hoffman accompanying  
14 this notice of motion and motion.  
15

16 Dated: July 21, 2008

NOSSAMAN LLP

17 By: \_\_\_\_\_/S/  
18 Sophie Froelich, Esq.